

The Gazette  of India

EXTRAORDINARY

PART II—Section 2

PUBLISHED BY AUTHORITY.

No. 65] NEW DELHI, TUESDAY, DECEMBER 22, 1959/PAUSA 1, 1351 (SAKA)

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 22nd December, 1959:—

BILL No. XXIII of 1959

A bill to provide for the care, protection, maintenace, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Children Act, 1959.

(2) It extends to all the Union territories.

Short title,
extent and
commence-
ment.

(3) It shall come into force in any Union territory on such date as the Administrator may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas thereof.

2. In this Act, unless the context otherwise requires,—

Definitions

(a) "Administrator" means the administrator of a Union territory, whether called a Lieutenant Governor, a Chief Commissioner or by any other name;

(b) "begging" means—

(i) soliciting or receiving alms in a public place or entering on any private premises for the purpose of soliciting

or receiving alms, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;

(ii) exposing or exhibiting with the object of obtaining or extorting alms any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iii) allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms;

(c) "brothel", "prostitute", "prostitution" and "public place" shall have the meanings respectively assigned to them in the Suppression of Immoral Traffic in Women and Girls Act, 1956;

104 of 1956.

(d) "child" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years;

(e) "children's court" means a court constituted under section 4;

(f) "children's home" means an institution established or certified by the Administrator under section 7 as a children's home;

(g) "competent court" means a children's court constituted under section 4, and where no such court has been constituted, includes any court empowered under sub-section (2) of section 5 to exercise the powers conferred on a children's court;

(h) "dangerous drug" shall have the meaning assigned to it in the Dangerous Drugs Act, 1930;

2 of 1930.

(i) "delinquent child" means a child who has been found to have committed an offence;

(j) "guardian" in relation to a child, includes any person who, in the opinion of the court having cognizance of any proceeding in relation to a child, has, for the time being, the actual charge of, or control over, that child;

(k) "neglected child" means a child who—

(i) is found begging; or

(ii) is found without having any home or settled place of abode or any ostensible means of subsistence or is found destitute, whether he is an orphan or not; or

(iii) has a parent or guardian who is unfit to exercise or does not exercise proper care and control over the child; or

(iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is

found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life;

(l) "observation home" means any institution or place established or recognised by the Administrator under section 9 as an observation home;

(m) "offence" means an offence punishable under any law for the time being in force;

(n) "prescribed" means prescribed by rules made under this Act;

(o) "probation officer" means an officer appointed as a probation officer under this Act or under the Probation of Offenders Act, 1958;

20 of 1958.

(p) "special school" means an institution established or certified by the Administrator under section 8;

(q) "supervision", in relation to a child placed under the care of any parent, guardian or other fit person under this Act, means the supervision of that child by a probation officer for the purpose of ensuring that the child is properly looked after and that the conditions imposed by the competent court are complied with;

5 of 1898.

(r) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898, shall have the meanings assigned to them in that Code.

3. Where an inquiry has been initiated against a child and during the course of such inquiry the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a child.

Continuation of inquiry in respect of child who has ceased to be child.

CHAPTER II

COMPETENT COURTS AND INSTITUTIONS FOR CHILDREN

5 of 1898.

4. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Administrator may, by notification in the Official Gazette, constitute for any area specified in the notification, one or more children's courts for holding inquiries regarding neglected or delinquent children under this Act.

Children's courts.

(2) A children's court shall be presided over by a magistrate or a Bench consisting of two or more magistrates as the Administrator thinks fit to appoint, and where a Bench is so constituted, one of the magistrates shall be designated as the senior magistrate and one of them shall, as far as practicable, be a woman.

(3) In the event of any difference of opinion among the magistrates constituting a Bench, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the senior magistrate shall prevail.

(4) A children's court, where it is presided over by a Bench of magistrates, may act notwithstanding the absence of any of the magistrates, and no order made by the Bench shall be invalid by reason only of the absence of any magistrate during any stage of the hearing of the proceeding.

(5) No person shall be appointed to preside over a children's court unless he is a magistrate of the first class and has, in the opinion of the Administrator, special knowledge of child delinquency and child welfare.

Power of
children's
court and
other courts.

5. (1) Where a children's court has been constituted for any area, such court shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings relating to neglected or delinquent children under this Act.

(2) Where no children's court has been constituted for any area, the powers conferred on the children's court by or under this Act shall be exercised in that area, only by the following, namely:—

(a) the district magistrate; or

(b) the sub-divisional magistrate; or

(c) any salaried magistrate of the first class.

(3) The powers conferred on the children's court by or under this Act may also be exercised by the High Court and the court of session, when the proceeding comes before them in appeal, revision or otherwise.

Procedure to
be followed
by a
magistrate
not em-
powered
under this
Act.

6. (1) When any magistrate not empowered to exercise the powers of a children's court under this Act is of opinion that a person brought before him under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a child, he shall record such opinion and forward the child and the record of the proceeding to the competent court having jurisdiction over the proceeding.

(2) The competent court to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the child had originally been brought before it.

7. (1) The Administrator may establish and maintain as many children's homes as may be necessary for the reception of neglected children under this Act. Children's homes.

(2) Where the Administrator is of opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the neglected children to be sent there under this Act, he may certify such institution as a children's home for the purposes of this Act.

(3) Every children's home to which a neglected child is sent under this Act shall not only provide the child with accommodation and maintenance but also endeavour to provide him with facilities for education and for developing his character and abilities and to give him necessary training for protecting himself against moral dangers or exploitation and shall also perform such other functions as may be prescribed.

(4) The Administrator may, by rules made under this Act, provide for the management of children's homes and the circumstances under which, and the manner in which, the certificate of a children's home may be withdrawn.

8. (1) The Administrator may establish and maintain as many special schools as may be necessary for the reception of delinquent children under this Act. Special schools.

(2) Where the Administrator is of opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the delinquent children to be sent there under this Act, he may certify such institution as a special school for the purposes of this Act.

(3) Every special school to which a delinquent child is sent under this Act shall not only provide the child with accommodation and maintenance but also endeavour to provide him with facilities for education and developing his character and abilities and to give him necessary training for his reformation and shall also perform such other functions as may be prescribed.

(4) The Administrator may, by rules made under this Act, provide for the management of special schools and the circumstances under which, and the manner in which, the certificate of a special school may be withdrawn.

9. (1) The Administrator may establish and maintain as many observation homes as may be necessary for the temporary reception of children during the pendency of any inquiry regarding them Observation homes.

under this Act and such observation homes shall be maintained in such manner as may be prescribed.

(2) Where the Administrator is of opinion that any institution other than an institution established under sub-section (1) is fit for the temporary reception of children during the pendency of any inquiry regarding them under this Act, he may recognise such institution as an observation home for the purposes of this Act.

After-care
organisa-
tions.

10. (1) The Administrator may, by rules made under this Act, provide for the establishment or recognition of after-care organisations and may vest them with such powers as may be necessary for effectively carrying out their functions under this Act.

(2) Every such organisation shall take care of the children when they leave children's homes or special schools and shall, for the purpose of enabling them to lead an honest, industrious and useful life, take all such measures as it may deem necessary or as may be prescribed.

CHAPTER III

NEGLECTED CHILDREN

Production
of neglected
children
before com-
petent
courts.

11. (1) If any police officer or other person authorised by the Administrator in this behalf, by general or special order, is of opinion that a person is apparently a neglected child, such police officer or other person may take charge of that person for bringing him before a competent court.

(2) When information is given to an officer-in-charge of a police station about any neglected child found within the limits of such station, he shall enter in a book to be kept for the purpose the substance of such information and take such action thereon as he deems fit and if such officer does not propose to take charge of the child, he shall forward a copy of the entry made to the competent court.

(3) Every child taken charge of under sub-section (1) shall be brought before the competent court within a period of twenty-four hours of such charge taken excluding the time necessary for the journey from the place where the child had been taken charge of to the competent court.

(4) Every child taken charge of under sub-section (1) shall, unless he is kept with his parent or guardian, be sent to an observation home (but not to a police station or jail) until he can be brought before a competent court.

12. (1) If a person, who in the opinion of the police officer or the authorised person is a neglected child, has a parent or guardian who has the actual charge of, or control over, the child, the police officer or the authorised person may, instead of taking charge of the child, make a report to the competent court for initiating an inquiry regarding that child.

Special procedure to be followed when neglected child has parent.

(2) On receipt of a report under sub-section (1), the competent court may call upon the parent or guardian to produce the child before it and to show cause why the child should not be dealt with as a neglected child under the provisions of this Act and if it appears to the competent court that the child is likely to be removed from its jurisdiction or to be concealed, it may immediately order his removal (if necessary by issuing a search warrant for the immediate production of the child) to an observation home.

13. (1) When a person alleged to be a neglected child is produced before a competent court, it shall examine the police officer or the authorised person who brought the child or made the report and record the substance of such examination and hold the inquiry in the prescribed manner and may make such orders in relation to the child as it may deem fit.

Inquiry by competent court regarding neglected children.

(2) Where a competent court is satisfied on inquiry that a child is a neglected child and that it is expedient so to deal with him, the competent court may make an order directing the child to be sent to a children's home for the period until he ceases to be a child:

Provided that the competent court may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the child attains the age of eighteen years, in the case of a boy, or twenty years, in the case of a girl:

Provided further that the competent court may, if it is satisfied that having regard to the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(3) During the pendency of any inquiry regarding a child, the child shall, unless he is kept with his parent or guardian, be sent to an observation home for such period as may be specified in the order of the competent court.

Power to
commit
neglected
child to
suitable
custody.

14. (1) If the competent court so thinks fit, it may, instead of making an order under sub-section (2) of section 13 for sending the child to a children's home, make an order placing the child under the care of a parent, guardian or other fit person, on such parent, guardian or fit person executing a bond with or without surety to be responsible for the good behaviour and well-being of the child and for the observance of such conditions as the competent court may think fit to impose.

(2) At the time of making an order under sub-section (1) or at any time subsequently, the competent court may, in addition, make an order that the child be placed under supervision for any period not exceeding three years in the first instance.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), if at any time it appears to the competent court, on receiving a report from the probation officer or otherwise, that there has been a breach of any of the conditions imposed by it in respect of the child, it may, after making such inquiry as it deems fit, order the child to be sent to a children's home.

Uncontrollable children.

15. Where a parent or guardian of a child complains to the competent court that he is not able to exercise proper care and control over the child and the competent court is satisfied on inquiry that proceedings under this Act should be initiated regarding the child, it may send the child to an observation home and make such further inquiry as it may deem fit and the provisions of section 13 and section 14 shall, as far as may be, apply to such proceedings.

CHAPTER IV

DELINQUENT CHILDREN

Bail and
custody
of children.

16. (1) When any person accused of a bailable or non-bailable offence and apparently a child is arrested or detained or appears or is brought before a competent court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898, or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any reputed criminal or expose him to moral danger or that his release would defeat the ends of justice.

5 of 1898.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police

station, such officer shall cause him to be kept in an observation home in the prescribed manner (but not in a police station or jail) until he can be brought before a competent court.

(3) When such person is not released on bail under sub-section (1) by the competent court, it shall, instead of committing him to prison, make an order sending him to an observation home for such period during the pendency of the inquiry regarding him as may be specified in the order.

17. Where a child is arrested, the officer-in-charge of the police station to which the child is brought shall, as soon as may be after the arrest, inform—

Information to parent or guardian or probation officer.

(a) the parent or guardian of the child, if he can be found, of such arrest and direct him to be present at the competent court before which the child will appear; and

(b) the probation officer of such arrest in order to enable him to obtain information regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the competent court for making the inquiry.

18. Where a child having been charged with an offence appears or is produced before a competent court, the competent court shall hold the inquiry in accordance with the provisions of section 37 and may, subject to the provisions of this Act, make such order in relation to the child as it deems fit.

Inquiry by competent court regarding delinquent children.

19. (1) Where a competent court is satisfied on inquiry that a child has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the competent court may, if it so thinks fit,—

Orders that may be passed regarding delinquent children.

(a) allow the child to go home after advice or admonition;

(b) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person on such parent, guardian or other fit person executing a bond, with or without surety as the competent court may require, for the good behaviour and well-being of the child for any period not exceeding three years;

(c) make an order directing the child to be sent to a special school,—

(i) in the case of a boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;

(ii) in the case of any other child, for the period until he ceases to be a child:

Provided that the competent court may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit:

Provided further that the competent court may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the child attains the age of eighteen years, in the case of a boy, or twenty years, in the case of a girl;

(d) order the child to pay a fine if he is over fourteen years of age and earns money.

(2) Where an order under clause (b) or clause (d) of sub-section (1) is made, the competent court may, if it is of opinion that in the interests of the child and of the public it is expedient so to do, in addition make an order that the delinquent child shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the delinquent child:

Provided that if at any time afterwards it appears to the competent court on receiving a report from the probation officer or otherwise, that the delinquent child has not been of good behaviour during the period of supervision, it may, after making such inquiry as it deems fit, order the delinquent child to be sent to a special school.

(3) The competent court making a supervision order under sub-section (2) shall explain to the child and the parent, guardian or other fit person, as the case may be, under whose care the child has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the child, the parent, guardian or other fit person, as the case may be, the sureties, if any, and the probation officer.

(4) In determining the special school, or any person to whose custody a child is to be committed or entrusted under this Act, the court shall pay due regard to the religious denomination of the child to ensure that religious instruction contrary to the religious persuasion of the child is not imparted to him.

20. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no delinquent child shall be sentenced to death or imprisonment or committed to prison in default of payment of fine or in default of furnishing security:

Orders that may not be passed against delinquent children.

Provided that where a child who has attained the age of fourteen years has committed an offence and the competent court is satisfied that the offence committed is of so serious a nature or that his conduct and behaviour has been such that it would not be in his interest or in the interest of other children in a special school to send him to such special school and that none of the other measures provided under this Act is suitable or sufficient, the competent court may order the delinquent child to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the orders of the Administrator.

(2) On receipt of a report from a competent court under sub-section (1), the Administrator may make such arrangement in respect of the child as he deems proper and may order such delinquent child to be detained at such place and on such conditions as he thinks fit:

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed.

5 of 1898. 21. Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898, no proceeding shall be instituted and no order shall be passed against a child under Chapter VIII of the said Code.

Proceeding under Chapter VIII of the Criminal Procedure Code not competent against child.

5 of 1898. 22. (1) Notwithstanding anything contained in section 239 of the Code of Criminal Procedure, 1898 or in any other law for the time being in force, no child shall be charged with or tried for, any offence together with a person who is not a child.

No joint trial of child and person not a child.

5 of 1898. (2) If a child is accused of an offence for which under section 239 of the Code of Criminal Procedure, 1898, or any other law for the time being in force, such child and any person who is not a child would, but for the prohibition contained in sub-section (1), have been charged and tried together, the court taking cognizance of that offence shall direct separate trials of the child and the other person.

23. Notwithstanding anything contained in any other law, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

Special provision in respect of pending cases.

24. Notwithstanding anything contained in this Act, all proceedings in respect of a child pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the child has committed an offence, it shall record such finding and, instead of passing any sentence in respect of the child, forward the child to the competent court which shall pass orders in respect of that child in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that the child has committed the offence.

CHAPTER V

PROCEDURE OF COMPETENT COURTS GENERALLY AND APPEALS AND REVISION FROM ORDERS OF SUCH COURTS

Sittings, etc., of children's courts.

25. (1) A children's court shall hold its sittings at such place, on such day and in such manner, as may be prescribed.

(2) A magistrate empowered to exercise the powers of a children's court under sub-section (2) of section 5 shall while holding any inquiry regarding a child under this Act, as far as practicable, sit in a building or room different from that in which the ordinary sittings of civil and criminal courts are held, or on different days or at times different from those at which the ordinary sittings of such courts are held.

Persons who may be present in children's court.

26. (1) Save as provided in this Act, no person shall be present at any sitting of a competent court, except—

(a) any officer of the competent court, or

(b) the parties to the inquiry before the competent court, the parent or guardian of the child and other persons directly concerned in the inquiry including police officers, and

(c) such other persons as the competent court may permit to be present.

(2) Notwithstanding anything contained in sub-section (1), if at any stage during an inquiry, a competent court considers it to be expedient in the interest of the child or on grounds of decency or morality that any person including the police officers, legal practitioners, the parent, guardian or the child himself should withdraw, the competent court may give such direction, and if any person refuses to comply with such direction, the competent court may have him removed and may, for this purpose, cause to be used such force as may be necessary.

(3) No legal practitioner shall be entitled to appear before a competent court in any case or proceeding before it, except with the special permission of the competent court.

27. Any competent court before which a child is brought under any of the provisions of this Act may, whenever it so thinks fit, require any parent or guardian having the actual charge of, or control over, the child to be present at any proceeding in respect of the child. Attendance of parent or guardian of child.

28. If at any stage during the course of an inquiry, a competent court is satisfied that the attendance of the child is not essential for the purpose of the inquiry, the competent court may dispense with his attendance and proceed with the inquiry in the absence of the child. Dispensing with attendance of child.

29. (1) When a child who has been brought before a competent court under this Act is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent court may send the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment. Committal to approved place of child suffering from dangerous disease and its future disposal.

(2) Where a child is found to be suffering from leprosy or is of unsound mind, he shall be dealt with under the provisions of the Lepers Act, 1898 or the Indian Lunacy Act, 1912, as the case may be.

(3) Where a competent court has taken action under sub-section (1) in the case of a child suffering from an infectious or contagious disease, the competent court before restoring the said child to his partner in marriage, if there has been such, or to the guardian, as the case may be, shall where it is satisfied that such action will be in the interest of the said child call upon his partner in marriage or the guardian, as the case may be, to satisfy the court by submitting to medical examination that such partner or guardian will not re-infect the child in respect of whom the order has been passed.

30. (1) Where it appears to a competent court that a person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a child, the competent court shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be forthcoming and shall record a finding whether the person is a child or not, stating his age as nearly as may be. Presumption and determination of age.

(2) No order of a competent court shall be deemed to have become invalid merely by any subsequent proof that the person in respect

of whom the order has been made is not a child, and the age recorded by the competent court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person.

Circumstances to be taken into consideration in making orders under this Act.

31. In making any order in respect of a child under this Act, a competent court shall take into consideration the following circumstances, namely:—

- (a) the age of the child;
- (b) the circumstances in which the child is living;
- (c) the reports made by the probation officer;
- (d) the religious persuasion of the child;
- (e) such other circumstances as may, in the opinion of the competent court, require to be taken into consideration in the interests of the child:

Provided that in the case of a delinquent child, the above circumstances shall be taken into consideration after the competent court has recorded a finding against the child that he has committed the offence:

Provided further that if no report of the probation officer is received within ten weeks of his being informed under section 17, it shall be open to the competent court to proceed without it.

Sending a child outside jurisdiction.

32. In the case of a neglected or delinquent child whose ordinary place of residence lies outside the jurisdiction of the competent court before which he is brought, the competent court may, if satisfied after due inquiry that it is expedient so to do, send the child back to a relative or other person who is fit and willing to receive him at his ordinary place of residence and exercise proper care and control over him, notwithstanding that such place of residence is outside the jurisdiction of the competent court; and the competent court exercising jurisdiction over the place to which the child is sent shall in respect of any matter arising subsequently have the same powers in relation to the child as if the original order had been passed by itself.

Reports to be treated as confidential.

33. The report of the probation officer or any circumstance considered by the competent court under section 31 shall be treated as confidential:

Provided that the competent court may, if it so thinks fit, communicate the substance thereof to the child or his parent or guardian and may give such child, parent or guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.

34. (1) No report in any newspaper, magazine or news sheet of any inquiry regarding a child under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the child, nor shall any picture of any such child be published:

Prohibition of publication of names, etc., of children involved in any proceeding under this Act.

Provided that for reasons to be recorded in writing, the court holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(2) Any person contravening the provisions of sub-section (1) shall be punishable with fine which may extend to one thousand rupees.

35. (1) Subject to the provisions of this section, any person aggrieved by an order made by a competent court under this Act may, within thirty days from the date of such order, prefer an appeal to the court of session:

Appeals

Provided that the court of session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from—

(a) any order of acquittal made by the competent court in respect of a child alleged to have committed an offence; or

(b) any order made by a competent court in respect of a finding that a person is not a neglected child.

(3) No second appeal shall lie from any order of the court of session passed in appeal under this section.

36. The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent court or court of session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Revision.

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

37. (1) Save as otherwise expressly provided by this Act a competent court, while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid

Procedure in inquiries, appeals and revision proceedings.

down in the Code of Criminal Procedure, 1898, for trials in summons cases.

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(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1898.

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Power to
amend
orders.

38. (1) Without prejudice to the provisions for appeal and revision under this Act, any competent court may, either on its own motion or on an application received in this behalf, amend any order as to the institution to which a child is to be sent or as to the person under whose care or supervision a child is to be placed under this Act.

(2) Clerical mistakes in orders passed by a competent court or errors arising therein from any accidental slip or omission may, at any time, be corrected by the competent court either on its own motion or on an application received in this behalf.

CHAPTER VI

SPECIAL OFFENCES IN RESPECT OF CHILDREN

Punishment
for cruelty
to child.

39. (1) Whoever, having the actual charge of, or control over, a child, assaults, abandons, exposes or wilfully neglects the child or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such child unnecessary mental and physical suffering shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) No court shall take cognizance of an offence punishable under sub-section (1) unless the complaint is filed with the previous sanction of the Administrator or an officer authorised by him in this behalf.

Employment
of children
for
begging.

40. (1) Whoever employs or uses any child for the purposes of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Whoever, having the actual charge of, or control over, a child, abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

41. Whoever gives, or causes to be given to any child any intoxicating liquor or dangerous drug in any public place, except upon the order of a duly qualified medical practitioner or in case of sickness or other urgent cause, shall be punishable with fine which may extend to two hundred rupees.

Penalty for giving intoxicating liquor or dangerous drug to a child.

42. Whoever ostensibly procures a child for the purpose of menial or other employment and withholds the earnings of the child or uses such earnings for his own purposes shall be punishable with fine which may extend to one thousand rupees.

Exploitation of child employees.

43. Offences punishable under section 40 or section 41 or section 42 shall be cognizable.

Certain offences to be cognizable.

CHAPTER VII

MISCELLANEOUS

44. (1) The Administrator may, notwithstanding anything contained in this Act, at any time, order a neglected or delinquent child to be discharged from the children's home or special school, either absolutely or on such conditions as he may think fit to impose.

Power of Administrator to discharge and transfer children.

(2) The Administrator may, notwithstanding anything contained in this Act, order—

(a) a neglected child to be transferred from one children's home to another;

(b) a delinquent child to be transferred from one special school to another or from a special school to a borstal school where such school exists or from a special school to a children's home;

(c) a child who has been released on licence which has been revoked or forfeited, to be sent to the special school or children's home from which he was released or to any other children's home or special school or borstal school:

Provided that the total period of the stay of the child in a children's home or a special school shall not be increased by such transfer.

(3) The Administrator may, notwithstanding anything contained in this Act, at any time, discharge a child from the care of any person under whom he was placed under this Act either absolutely or on such conditions as the Administrator may think fit to impose

Transfers
between
children's
homes, etc.,
under the
Act, and
children's
homes, etc.,
of like
nature in
different
parts of
India.

45. (1) The Administrator of a Union territory may direct any neglected child or delinquent child to be transferred from any children's home or special school within the Union territory to any other children's home, special school or institution of a like nature in any other State with the consent of the Government of that State.

(2) The Administrator of a Union territory may, by general or special order, provide for the reception in a children's home or special school within the Union territory of a neglected child or delinquent child detained in a children's home or special school or institution of a like nature in any other State where the Government of that State makes an order for such transfer, and upon such transfer the provisions of this Act shall apply to such child as if he had been originally ordered to be sent to such children's home or special school under this Act.

Transfer of
children of
unsound
mind or
suffering
from
leprosy.

46. (1) Where it appears to the Administrator that any child kept in a special school or children's home in pursuance of this Act is a leper or of unsound mind, the Administrator may order his removal to a leper asylum or mental hospital or other place of safe custody for being kept there for the remainder of the term for which he has to be kept in custody under the orders of the competent court or for such further period as may be certified by a medical officer to be necessary for the proper treatment of the child.

(2) Where it appears to the Administrator that the child is cured of leprosy or of unsoundness of mind, he may, if the child is still liable to be kept in custody, order the person having charge of the child to send him to the special school or children's home from which he was removed or, if the child is no longer liable to be kept in custody, order him to be discharged.

Placing out
on licence.

47. (1) When a child is kept in a children's home or special school, the Administrator may, if he so thinks fit, release the child from the children's home or special school and grant him a written licence for such period and on such conditions as may be specified in the licence permitting him to live with, or under the supervision of, any responsible person named in the licence willing to receive and take charge of him with a view to educate him and train him for some useful trade or calling.

(2) Any licence so granted under sub-section (1) shall be in force for the period specified in the licence or until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3) The Administrator may, at any time, by order in writing revoke any such licence and order the child to return to the children's home or special school from which he was released or to any other children's home or special school, and shall do so at the desire of the person with whom or under whose supervision the child has been permitted to live in accordance with a licence granted under sub-section (1).

(4) When a licence has been revoked or forfeited and the child refuses or fails to return to the special school or children's home to which he was directed so to return, the Administrator may, if necessary, cause him to be taken charge of and to be taken back to the special school or children's home.

(5) The time during which a child is absent from a special school or children's home in pursuance of a licence granted under this section shall be deemed to be part of the time for which he is liable to be kept in custody in the special school or children's home:

Provided that when a child has failed to return to the special school or children's home on the licence being revoked or forfeited, the time which elapses after his failure so to return shall be excluded in computing the time during which he is liable to be kept in custody.

48. Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a child who has escaped from a special school or a children's home or from the care of a person under whom he was placed under this Act and shall send the child back to the special school or the children's home or that person, as the case may be; and no proceeding shall be instituted in respect of the child by reason of such escape but the special school, children's home or the person may, after giving the information to the competent court which passed the order in respect of the child, take such steps against the child as may be deemed necessary.

Provision
in respect
of escaped
children.

49. (1) The competent court which makes an order for sending a neglected child or a delinquent child to a children's home or a special school or placing the child under the care of a fit person may make an order requiring the parent or other person liable to maintain the child to contribute to his maintenance, if able to do so, in the prescribed manner.

Contribution
by parents.

(2) The competent court before making any order under sub-section (1) shall inquire into the circumstances of the parent or other person liable to maintain the child and shall record evidence, if any,

in the presence of the parent or such other person, as the case may be.

(3) The person liable to maintain a child shall, for the purposes of sub-section (1), include in the case of illegitimacy, his putative father:

Provided that where the child is illegitimate and an order for his maintenance has been made under section 488 of the Code of Criminal Procedure, 1898, the competent court shall not ordinarily make an order for contribution against the putative father, but may order the whole or any part of the sums accruing due under the said order for maintenance to be paid to such person as may be named by the competent court and such sum shall be paid by him towards the maintenance of the child.

5 of 1898.

(4) Any order made under this section may be enforced in the same manner as an order under section 488 of the Code of Criminal Procedure, 1898.

5 of 1898.

Control of
custodian
over child.

50. Any person in whose custody a child is placed in pursuance of this Act shall, while the order is in force, have the like control over the child as he would have if he were his parent, and shall be responsible for his maintenance, and the child shall continue in his custody for the period stated by the competent court, notwithstanding that he is claimed by his parent or any other person.

Delinquent
child
undergoing
sentence at
commence-
ment of
Act.

51. In any area in which this Act is brought into force, the Administrator may direct that a delinquent child who is undergoing any sentence of imprisonment at the commencement of this Act shall, in lieu of undergoing such sentence, be sent to a special school for the remainder of the period of the sentence; and the provisions of this Act shall apply to the child as if he had been ordered by a competent court to be sent to such special school.

Appoint-
ment of
officers.

52. (1) The Administrator may appoint as many probation officers, officers for the inspection of special schools, children's homes, observation homes or after-care organisations and such other officers as he may deem necessary for carrying out the purposes of this Act.

(2) It shall be the duty of the probation officer—

(a) to inquire, in accordance with the direction of a competent court, into the antecedents and family history of any child accused of an offence, with a view to assist the court in making the inquiry;

(b) to visit neglected and delinquent children at such intervals as the probation officer may think fit;

(c) to report to the competent court as to the behaviour of any neglected or delinquent child;

(d) to advise and assist neglected or delinquent children and, if necessary, endeavour to find them suitable employment;

(e) where a neglected or delinquent child is placed under the care of any person on certain conditions, to see whether such conditions are being complied with; and

(f) to perform such other duties as may be prescribed.

(3) Any officer empowered in this behalf by the Administrator may enter any special school, children's home, observation home or after-care organisation and make a complete inspection thereof in all its departments and of all papers, registers and accounts relating thereto and shall submit the report of such inspection to the Administrator.

45 of 1860. 53. Probation officers and other officers appointed in pursuance of this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. Officers appointed under Act to be public servants.

5 of 1898. 54. The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall, as far as may be, apply to bonds taken under this Act. Procedure in respect of bonds.

55. The Administrator may, by general or special order, direct that any power exercisable by him by or under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by an officer subordinate to the Administrator. Delegation of powers.

56. No suit or other legal proceeding shall lie against the Administrator or any probation officer or other officer appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder. Protection of action taken in good faith.

8 of 1897. 57. (1) The Reformatory Schools Act, 1897, and section 29B and section 399 of the Code of Criminal Procedure, 1898, shall cease to apply to any area in which this Act has been brought into force. Act 8 of 1897 and certain provisions of Act 5 of 1898 not to apply.

5 of 1898. (2) The Women's and Children's Institutions (Licensing) Act, 1956 shall not apply to any children's home, special school or observation home established and maintained under this Act. Act 5 of 1956 not to apply.

105 of 1956.

58. (1) The Administrator may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the places at which, the days on which and the manner in which a children's court may hold its sittings;

(b) the procedure to be followed by a children's court or any other competent court in holding inquiries under this Act; and the mode of dealing with children suffering from dangerous diseases or mental complaints;

(c) the circumstances in which, and the conditions subject to which, an institution may be certified as a special school or a children's home or recognised as an observation home, and the certification or recognition withdrawn;

(d) the internal management of special schools, children's home and observation homes;

(e) the functions and liabilities of special schools, children's homes and observation homes;

(f) the inspection of special schools, children's homes, observation homes and after-care organisations;

(g) the establishment, management and functions of after-care organisations; the circumstances in which, and the conditions subject to which, an institution may be recognised as an after-care organisation;

(h) the qualifications and duties of probation officers;

(i) the recruitment and training of persons appointed to carry out the purposes of this Act and the terms and conditions of their service;

(j) the manner in which a child may be sent outside the jurisdiction of a competent court;

(k) the manner in which contribution for the maintenance of a child may be ordered to be paid by a parent or guardian;

(l) the conditions under which a child may be placed out on licence and the form and conditions of such licence;

(m) the conditions subject to which children may be placed under the care of any parent, guardian or other fit person under this Act and the obligations of such persons towards the children so placed;

(n) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised

in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

59. If, immediately before the date on which this Act comes into force in any area there is in force in that area, any law corresponding to this Act, that law shall stand repealed on the said date: Repeal and savings.

Provided that the repeal shall not affect—

(a) the previous operation of any law so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

STATEMENT OF OBJECTS AND REASONS

Children are the most vulnerable group in any population and in need of the greatest social care. On account of their vulnerability and dependence they can be exploited, ill-treated and directed into undesirable channels by anti-social elements in the community. The State has the duty of according proper care and protection to children at all times, as it is on their physical and mental well-being that the future of the nation depends. With increased industrialisation and urbanisation, the State needs to be even more alert and vigilant in this respect. This Bill provides for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories for which the Central Government has direct responsibility.

It should also be remembered that the children often become delinquent by force of circumstances and not by choice. By improving the unfavourable environment and giving suitable training, it is possible to reform his anti-social attitudes and to mould him into a responsible citizen. Measures for juvenile delinquents should, therefore, aim at rehabilitation rather than punishment. The programmes proposed to be undertaken under this Bill are meant to be of a positive character.

At present the Bombay Children Act, 1924 is in force in Delhi. It was considered whether a replacement of this outmoded Act by the Bombay Children Act, 1948 would not achieve the aims and objects referred to above. It was found that the Bombay Children Act, 1948 or any other State Act for that matter would not fully meet the needs of the Union territories. As such, the present Bill which takes into account the special needs of the Union territories has been prepared.

NEW DELHI;

The 15th December, 1959.

K. L. SHRIMALI.

FINANCIAL MEMORANDUM

Clause 52 of the Bill contemplates the appointment of probation officers and other officers for performing functions under the Bill when enacted. Clauses 7, 8, 9 and 10 contemplate the establishment and maintenance of children's homes, special schools, observation homes and after-care organisations. The proposed legislation, if passed, is intended to be brought into force immediately in Delhi as the problem of neglected or delinquent children is acute and widespread in this area. The enforcement of this legislation in other Union territories is expected to be gradual. The Bombay Children Act, 1924, is already in force in Delhi and as such Delhi already has a nucleus of some of the services and institutions for delinquent children. These need to be expanded and improved and certain services and institutions need to be set up for neglected children. At this stage it is not possible to frame an accurate estimate of the funds needed by all Union territories for implementing fully this Bill when enacted. Roughly speaking about Rs. 15 lakhs for Delhi and Rs. 4 lakhs for every other Union territory will be needed to implement the Act fully.

The following budget provision has been approved subject to ratification by Parliament under demand No. 57-Delhi Area Grant in the

1960-61 budget of Delhi for continuing and expanding some of the services necessary for implementing this Bill.

	Rs.
After-care ..	1,70,000
Probation Services ..	38,000
Remand Home ..	1,04,000
Children's Home ..	1,28,000
Home for healthy children of lepers ..	1,25,000
Beggars' Home ..	1,50,000
Certified School for Boys and Girls ..	1,25,000
Counselling & Guidance Bureau. ..	70,000
Total ..	9,10,000

Funds to be made available in the subsequent years will vary and will be determined from time to time.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 58 of the Bill empowers the Administrator of a Union territory to make rules for carrying out the purposes of the Bill when enacted. Sub-clause (2) of that clause enumerates the various matters in respect of which rules may be made. These matters relate, among others, to the procedure to be followed by a children's court in holding inquiries, the mode of dealing with children suffering from mental complaints, certification and recognition of institutions as special schools, children homes and observation homes, inspection of various institutions set up or recognised under this Act, the recruitment, training, qualifications and duties of probation officers and other persons appointed to carry out the purposes of this Act, the manner in which a child may be sent outside the jurisdiction of a court, the conditions under which a child may be placed out on licence as well as the form and conditions of such licence, the conditions subject to which children may be placed under the care of parents, guardians or any other persons as well as the obligation of such persons towards the children.

The matters in respect of which rules may be made are matters of procedure or detail. The delegation of legislative power is, therefore, of a normal character.

S. N. MUKERJEE,
Secretary.

